

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Frankie L. Doctor,)	C/A No. 0:14-425-JFA-PJG
)	
Petitioner,)	
)	
v.)	ORDER
)	
Warden Mansukhani,)	
)	
Respondent.)	
_____)	

The *pro se* petitioner, Frankie L. Doctor, is a federal inmate housed at the Federal Correctional Institution (FCI) in Estill, South Carolina. He brings this action under 28 U.S.C. § 2241 challenging his federal sentence imposed by the this court in August 2006. Specifically, petitioner claims actual innocence of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), contending his former conviction for assault and battery of a high and aggravated nature (ABHAN) does not qualify as a predicate offense under the ACCA. Petitioner cites to *United States v. Hemingway*, 734 F.3d 323 (4th Cir. 2013) wherein the Fourth Circuit found that the South Carolina crime of ABHAN is not a categorically violent felony under the ACCA. Petitioner seeks resentencing without the ACCA enhancement.

The petitioner went to trial in the United States District Court for the District of South Carolina and was found guilty of being a felon in possession of a firearm. He was sentenced on April 20, 2006 to 260 months imprisonment. He filed an unsuccessful direct appeal of his sentence. On January 10, 2013, this court denied the motion of petitioner to vacate his

sentence pursuant to 28 U.S.C. § 2255 as untimely.

The petitioner now asks this court to resentence him without the career offender designation, contending that he is actually innocent of his sentence enhancement pursuant to the ACCA.

The Magistrate Judge assigned to this action¹ has prepared a thorough Report and Recommendation and opines that the petitioner's § 2241 motion should be summarily dismissed. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The petitioner was advised of his right to file objections to the Magistrate Judge's Report and Recommendation and he has timely done so. Petitioner contends that from sentencing through his direct appeal and first § 2255 motion, the circuit has foreclosed any challenges to the use of ABHAN as being a violent felony for the purpose of ACCA. Petitioner further argues that *Deschamps v. United States*, 133 S.Ct. 2276 (2013) sets forth a new standard to evaluate which crimes set forth a new standard to evaluate violent felonies. He also argues that in light of the recent Fourth Circuit case of *Whiteside v. United States*, No. 13-7152, that he should be permitted to file this § 2241.


¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1).

The Magistrate Judge reviewed the § 2241 claims in light of the three-part test set out in *In re Jones*, 226 F.3d 328, 333 (4th Cir. 2000). A petition attacking the validity of a sentence should normally be brought under 28 U.S.C. § 2255. Because the petitioner has already filed one § 2255 petition, a second or successive petition is prohibited unless he can obtain certification from the Fourth Circuit Court of Appeals, which he has not done.

In light of the recent case of *Whiteside*, the court wishes to receive a response from the defendant to the Report and Recommendation. Accordingly, the government is requested to file a response within 30 days of the date of this order.

IT IS SO ORDERED.

July 23, 2014
Columbia, South Carolina


Joseph F. Anderson, Jr.
United States District Judge